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Section 2—Applicability of the SPCC Rule

ACC supports a number of provisions outlined in this section. The Guidance indicates that, for relatively small containers that can be readily monitored, a filling procedure can be established as environmental equivalents to physical overfill prevention devices. We find this and other provisions helpful and appropriate in implementing the 2002 amendments to the SPCC regulation.

ACC has identified several areas in this section of the Guidance that we believe should be amended and/or clarified as follows:

Section 2.2—Definition of Oil and Activities Involving Oil

Issue: EPA has not supplied a useable definition for oil but instead has used the word to define itself: "Oil means oil…". Section 2.2 goes on to state that," EPA may determine that a substance, chemical, material or mixture is an oil even if it is not on the USCG list." This approach causes substantive confusion in the regulated community. ACC recognizes that the "[o]il means oil" definition is essentially the legislative definition provided in Clean Water Act §311(a)(1); however, it is incumbent upon the Agency to provide a regulatory interpretation of the legislative language that enables the intent of Congress to be implemented.

Recommendation: EPA should work with other involved agencies and develop a clear and concise definition of oil that is consistent among agencies. Any definition agreed upon should be done through a formal notice and comment process.

Section 2.2.2—Synthetic Oils

Issue: There is no logic that relates the building blocks of a synthetic material to the oil or non-oil classification of the resultant compound. Simply because a synthetic material contains, as a building block, a material that by itself would be considered a petroleum oil does not make the product an oil. EPA should use the regulatory process, not Inspector Guidance to establish the definition of a "synthetic oil".

Recommendation: Under this section, the reference to the base materials from which synthetic oil may be derived and the conclusion that those base materials are somehow related to the applicability of the SPCC requirements to "synthetic oil" should be removed.

Revised Guidance Language: Omit the following sentences from the last paragraph of page 2-3: **"The base materials from which synthetic oil are synthesized include…and others. Because of their origin, synthetic oils are generally covered…"**

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Section 2.2.3 – Determination of "oil" for Natural Gas and Hazardous Substances

Issue: The definition for oil under 112.2 includes "…oil mixed with wastes…" There is no discussion within the definition for oil mixed with hazardous substances. Hazardous substances as defined in 40 CFR 116 are specifically excluded from being an "oil" under 40 CFR 112.

Recommendation: Remove the reference to Hazardous Substances from this section of the Guidance.

Revised Guidance Language: The title of this section should be changed to, "Determination of 'oil' for Natural Gas and **Hazardous Wastes**". The words **"Hazardous Substances"** should be removed from both the subtitle of this section (**Hazardous Substances** and Hazardous Wastes**)** and the first paragraph of that subsection ("Oils covered under the SPCC rule therefore include certain hazardous waste that are mixed with oil…"). The entire last sentence of this section ("Hazardous substances that are neither oils nor mixed with oils are not subject to SPCC rule requirements.") should be removed.

Section 2.2.4 – Activities Involving Oil

Issue: Per Appendix A to Part 112, Memorandum of Understanding, operations involving the movement of oil using highway vehicles, railcars and inter-facility pipelines fall under the jurisdiction of the Department of Transportation not EPA.

Recommendation: Remove the reference to highway vehicles, railcars and pipelines from the examples of distribution activities.

Revised Guidance Language: In Table 2-1, under distribution activity, change the example to read, "Selling or marketing oil for further commerce. Note that businesses commonly referred to as oil distributors…"

Section 2.3.1—Definition of Facility

Issue: The existence of a common receiving water body has no relevance to defining a "facility". Many different facilities may drain to a common water body or share a common pathway to that water body. Likewise, a single facility may drain to several different water bodies. There is no basis in the regulatory record for including this factor in determining the extent of a "facility".

Recommendation: Remove the fourth bullet point, "Shared drainage pathway (e. g. same receiving waterbodies)" from the list of factors to consider.

Section 2.3.2—Determination of Transportation-related and Non-transportation – related Facilities

Issue: The Memorandum of Understanding defines the authority of EPA concerning tank trucks and railcars. EPA jurisdiction is limited to highway vehicles, railcars and pipelines that are used for the transportation of oil "**exclusively"** within the confines of a non-transportation facility. Tank truck and railcars that leave a facility and enter inter/intrastate commerce, even if only to return again to the same facility, are not under the jurisdiction of EPA. Highway vehicle, railcars and pipeline that are used in inter or intrastate services are under the jurisdiction of others.

Recommendation: Clarify the extent of EPA jurisdiction over highway vehicles, rail cars and pipelines.

Revised Guidance Language: Modify the sixth bullet item under Non-Transportation-related Facilities in Table 2-2 to read, "Highway vehicles, railroad cars, and pipelines used to transport oil **exclusively** within the confines of non-transportation-related facility."

Section 2.3.3—EPA/DOT Jurisdiction Scenarios
Subsection—Tank Trucks

Issue: Tank trucks that leave a facility, travel across public roads, and return to that facility are in intrastate (if not interstate) commerce and not subject to EPA jurisdiction. The MOU (40 CFR 112 Appendix A and B) clearly state that only those vehicles used exclusively within the confines of a non-transportation-related facility and are not intended to transport oil in inter or intrastate commerce fall under EPA jurisdiction. Two examples under this subsection misstate this jurisdictional divide.

Recommendation: In the first paragraph the example, "…a tank truck that moves around within a facility and only leaves the facility to obtain more fuel (oil) would be considered to distribute fuel exclusively at one facility. This tank truck would be subject to the SPCC rule…" is not correct and does not reflect the MOU. The reason for entering intrastate service, even if it is to simply refill and return, is irrelevant to jurisdictional control. There are many cases where tank trucks and rail cars are in dedicated service between a single supplier and a single consumer. Though such trucks may be unloaded at a single facility, they do not transport oil exclusively within the confines of the facility and they are intended for inter or intrastate commerce. The example from the Guidance stated above should be removed.

In the second paragraph of this subsection, an example is given where a tank truck, "…parks overnight with a partly filled fuel tank, it is subject to the SPCC rule…" The act of simply parking a tank truck does not remove it from transportation service. It does not cause it to be used exclusively within the confines of a non-transportation-related facility and does not terminate the intent to transport in inter or intrastate commerce…both of which are requirements under the MOU for jurisdiction by EPA.

The entire second paragraph under this subsection does not conform to the MOU and should be stricken.

Subsection—Railroad Cars

Issue: Railroad cars that leave a facility and travel across intrafacility rail lines are in intrastate (if not interstate) commerce and not subject to EPA jurisdiction. The MOU (40 CFR Appendix A and B) clearly states that only those railroad cars that are used exclusively within the confines of a non-transportation-related facility and are not intended to transport oil in inter or intrastate commerce fall under EPA jurisdiction. Examples under this subsection misstate this jurisdictional divide. Additionally, this section infers that railroad cars that reach there final destination are storing oil and thus subject to EPA requirements. Not only is this contrary to the MOU, containment of railcars awaiting loading/unloading is not practicable.

Recommendation: In the first paragraph of this subsection, an example is given where "EPA jurisdiction includes railroad cars that are at their final destination…If loading/unloading has begun, the railroad car itself may become the non-transportation-related facility even if no other containers at the property would qualify the property." Neither the act of simply parking a railroad car nor the act of loading/unloading a railroad car removes that car from transportation service. These actions do not cause it to be used exclusively within the confines of a non-transportation-related facility and do not terminate the intent to transport in inter or intrastate commerce…both of which are requirements under the MOU for jurisdiction by EPA. The second half of the first paragraph under this subsection does not conform to the MOU and should be stricken.

Subsection—Any Loading/Unloading Activities

Issue: EPA is defining the term "loading/unloading area" in the Guidance without proceeding through the appropriate rulemaking procedures. EPA goes on to assign specific section [112.7(c)] of the regulation to that newly defined term.

Recommendation: The areas subject to the provisions or §112.7(c) are already defined in §112.7(b). The decision to determine where "experience indicates a reasonable potential for equipment failure" should be left to the certifying Professional Engineer. Any discussion of loading/unloading should be limited to activities involving a loading/unloading rack. All portions of this subsection, except the last two sentences should be stricken.

Subsection—Motive power

Issue: The Guidance is confusing. In the second sentence it states that motive power containers can be subject to the SPCC rule but goes on in the third sentence to state the EPA does not believe the intent of SPCC was to cover motive power.

Recommendation: Remove the second sentence in this subsection.

Section 2.5.4 – Tank Re-rating

Issue: There is no provision of the SPCC rule that disallows re-rating of a bulk storage tank (container) capacity. EPA fails to recognize standard and customary industry practices where the capacities of bulk storage tanks are modified and the tanks are subsequently re-rated. Standard industry procedures define the normal capacity (normal fill level), tank rated capacity (safe fill level), and the maximum capacity (overfill level) and the procedures for calculating those capacities if alterations to a tank's integral design, internal appurtenances, or filling systems have been made. Section 112.2 of the SPCC Rule defines s*torage capacity* of a container as the shell capacity. The shell capacity or maximum capacity is defined by industry standards as the volume at which any additional product will overflow from the tank. Therefore, if a tank has been altered by changing its overflow level the tank should be re-rated to reflect that change. In the Guidance it is specifically stated that a tank cannot be re-rated to a *lower* capacity and the shell capacity remains equal to the original rated shell capacity. This makes one wonder how an inspector would view the capacity of a tank if the overflow was raised in a tank thereby increasing its capacity. Would the increased capacity of the tank continue to be reported as the understated original capacity? It is also irrelevant as to whether alternations could be reversed or additional alterations made at some point in the future as this would only require additional re-rating of the tank and revisions of the facility's SPCC plan. By focusing on the ease with which an alteration can be reversed, EPA displays a fundamental distrust of the regulated community. This approach should not be the basis for a rulemaking nor for the drafting of guidance. The requisite availability of the certified SPCC Plan, as amended when required by law to document changes in container capacities, is EPA's means of assuring compliance.

Recommendation: Revise the Guidance by eliminating any discussion indicating that tank capacities cannot be re-rated. Replace that wording with instructions that re-rating of tank capacities must be conducted according to standard industrial practices and be documented in the tank history, and SPCC Plan if appropriate. The section could also direct inspectors to review the re-rating calculations and documentation as necessary to ensure compliance with the SPCC Rule.

Revised Guidance Language: Shell capacity should be used as the measure of storage capacity, unless changes are made to the design shell capacity in accordance with industry standards and the original design specifications. Relevant industry standards include American Petroleum Institute (API) Standard 653 “Tank Inspection, Repairs, Alteration, and Reconstruction” (API-653). This standard includes additions or modifications to shell penetrations such as overfill diverters. When tank capacities have been re-rated according to industry standards the alteration should be documented in the tank history records, and in the SPCC Plan certified by a PE as

required. Inspectors may review the records of tanks to ensure that the re-ratings were conducted according to industry standards and/or good engineering practices, and that the facility's SPCC Plan has been revised as necessary.

Section 2.8.1—Bulk Storage Containers

Issue: Only bulk storage tanks that have a capacity equal to or greater than 55 gallons are included in the SPCC rule.

Recommendation: Clarify in this section that the requirements of §112.8(c), etc., do not apply to all bulk storage tanks but only those equal to or greater than 55 gallons.

Section 2.8.2—Oil-filled Equipment

Issue: The inspection requirements in SPCC for containers apply only to bulk storage containers [§112.8(c)(6)]. There are numerous methods other than visual inspection to determine the integrity of oil-filled equipment. Good engineering practice will vary substantially among differing facilities and specific situations. The responsibility for determining what constitutes good engineering practice lies with the facility owner and/or certifying Professional Engineer.

Recommendation: Reference to that which EPA "believes" to be good engineering practice is not appropriate in this guidance. The second paragraph of this section should be stricken.

Subsection—Oil-filled Operating Equipment

Issue: EPA has proposed a definition for "Oil-filled Operational Equipment" in 70 FR 73550. In that definition, EPA references, without definition, "oil-filled manufacturing equipment". Though the proposed regulation has substantial merit in discerning among bulk storage, operational equipment and manufacturing equipment, it is premature to provide guidance in this area where regulation is in transition.

Recommendation: Strike this subsection from the current Guidance until such time as the revisions are promulgated.

Subsection—Oil-filled Manufacturing Equipment

Same comment as for Oil-filled Operating Equipment above.

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Section 3—Environmental Equivalence

ACC supports a number of provisions outlined in this section. There are several environmental equivalence examples provided in Section 3 that are helpful. For instance, the use of drain valves at electrical substations that automatically shut off upon detection of oil and the use of oil/water separators as part of the facility drainage system are useful examples. In addition, Table 3-1 and Table 3-3 are useful summaries of the SPCC provisions that are eligible for environmentally equivalent measures. We find this/these provision(s) helpful and appropriate in implementing the 2002 amendments to the SPCC regulation.

ACC has identified several areas in this section of the Guidance that we believe should be amended and/or clarified as follows:

Section 3.1 - Introduction

Issue: The letter from Marianne Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response to Daniel Gilligan, President, Petroleum Marketers Association of America (PMAA) regarding equivalent environmental protection for integrity testing of certain shop-built containers does not state a specific inspection frequency for containers. ACC believes that retaining flexibility on inspection frequency is appropriate and that the interval between inspections should be subject to good engineering practices and review by the certifying engineer.

Recommendation: Under Section 3.1—Introduction, ACC recommends that the text stating "inspected at least monthly" for such containers be removed and replaced with a more general statement such as "inspected at an appropriate interval".

Revised Guidance Language: The second full paragraph of Page 3-2 should read, "EPA has indicated that for certain shop-built containers – drums and small bulk storage containers, for example – for which internal corrosion poses minimal risk of failure, which are inspected **at an appropriate interval**, and for which all sides are visible, visual inspection alone may suffice to meet the integrity testing requirements under §112.8(c)(6) or §112.12(c)(6) (67 FR 47120). These are only examples; alternative measures that provide equivalent environmental protection may also be appropriate for other site-specific circumstances. See Chapter 7, Inspection, Evaluation, and Testing, for a discussion of "environmentally equivalent" integrity testing."

Section 3.3 – Policy Issues Addressed by Environmental Equivalence

Issue: Under Section 112.7(d)(4), which deals with transfer operations, the requirement for integrity and leak testing applies only to buried piping.

Recommendation: Under Section 3.3.5 – Piping, ACC recommends clarifying that integrity and leak testing is required only for "buried piping", not "all piping".

Revised Guidance Language: The last paragraph of Page 3-12 should read, "These provisions of the SPCC rule require that facilities generally protect buried piping against corrosion; ... regularly inspect all aboveground valves, piping, and appurtenances. The rule also requires integrity and leak testing of **buried piping** at the time of installation, modification, construction, relocation, or replacement."

Section 3.4 – Review of Environmental Equivalence

Issue: Under Section 112.7(e), records that are kept as part of usual and customary business practices are generally acceptable for SPCC purposes.

Recommendation: Under Section 3.4.1 – SPCC Plan Documentation, ACC recommends clarifying that the records do not have to be physically kept "with the (SPCC) plan". As long as they are kept at the facility for a period of three years (with the location of the records referenced in the SPCC Plan) then the SPCC requirements should be met.

Revised Guidance Language: The first paragraph of Page 3-17 should read in part, "Records that would be kept as part of usual and customary business practices are generally considered acceptable forms of documentation, but should be referenced in the Plan and available for an inspector's review during an inspection. These records must be maintained **at the facility** for a period of three years (§112.7(e))..."

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Section 4—Secondary Containment and Impracticability Determination

ACC supports a number of provisions outlined in this section**.** ACC welcomes the examples given for determining appropriate secondary containment capacity, and the figures 4-8 and 4-9, which provide examples for meeting the requirements of §112.7(c) and (h)(1). We find this/these provision(s) helpful and appropriate in implementing the 2002 amendments to the SPCC regulation.

ACC has identified several areas in this section of the Guidance that we believe should be amended and/or clarified as follows:

Section 4.2.2— Specific Secondary Containment Requirement

Issue: EPA has inappropriately mixed the requirements of Section 112.8(c), *Bulk Storage Containers*, and Section 112.7 (h), *Facility tank car and tank truck loading/unloading rack*, with the general requirements of 112.7 (c). EPA also introduces in this section of guidance a concept of "manifolded" containers not present in the regulation. As a result, the guidance for inspectors far exceeds the requirements of the regulation.

The requirement for "sufficient freeboard" is only found in Section 112.8 (c) as it applies to bulk storage containers. In this provision, containment must be sufficient for, "…the **largest single container** *[emphasis added]* and sufficient freeboard to contain precipitation." There is no discussion or concept of "containers manifolded together" nor "compartments" in the requirements for bulk storage containers.

The requirements for containing the "single largest compartment" are only found in Section 112.7(h) where, "You must design any containment system to hold at least the maximum capacity of any **single compartment** *[emphasis added]* of a tank car or tank truck loaded or unloaded at the facility." There is no discussion or concept of "containers manifolded" together nor "sufficient freeboard" in the requirements for transfer operations at loading racks.

Oil handling/processing facilities typically have entire processing trains (from storage containers, through reaction and purification systems, to final storage) that are comprised of literally dozens of pieces of oil containing equipment all connected together by piping. Under the Guidance, one might be lead to believe containment must be provided equal to the sum of the capacity of every single container that is piped together within a complex. This is clearly not the intent of the rule when containment is specifically for the largest **single** container or **single** compartment.

Even in this expansion of the rule beyond the requirements promulgated, EPA fails to recognize that tanks permanently manifolded together may be only connected at the top of the tank, are often isolated from one another by valves or skillet flanges, and

often require pumps to transfer from one vessel to another. Under these conditions, containers would function as single isolated units.

Recommendation: Eliminate the second and third paragraphs of Chapter 4.2.2 and add a clarifying statement that only the largest single bulk storage container (plus freeboard for rain) or tank car/truck compartment need be considered when sizing containment.

Revised Guidance Language: EPA should summarize the language as it appears in the regulation giving separate sections for each of the four areas that have specific containment requirements: bulk storage, loading/unloading racks, mobile/portable bulk storage, and production facility bulk storage. It should be clear and consistent with the regulations which of these four areas need to consider precipitation and the where the concept of either the largest single container or largest single compartment applies.

Section 4.2.3 – Role of the Inspector in Evaluating Secondary Containment Methods

Issue: The role of the EPA Inspector is not accurately described. For example, the statement that "the EPA Inspector should evaluate whether the secondary containment system is adequate for the facility…" could be interpreted by an EPA Inspector to mean that he/she should redo the calculations and engineering evaluations certified by the PE. We understand that the real intent is to have the EPA Inspector ensure that the topic has been addressed, and that the plan's provisions are being implemented in the field.

Recommendation: As a minimum, replace the first paragraph with new language.

Revised Guidance Language: "The EPA Inspector should ensure that secondary containment requirements have been addressed in the plan and that the plan's provisions are being implemented in the field. Some items that the EPA Inspector should look for in the field while inspecting for implementation of the plan include:…[*Continue with list of items to consider]*"

Section 4.2.4 – Sufficient Freeboard

Issue: The reference to the 25 year 24 hour rainstorm event is inappropriate, absent a notice and comment rulemaking. The regulation does not require utilization of this precipitation criterion and EPA Inspectors should not be misled to inspect against this prescriptive requirement. This rainfall allowance has not been required since the inception of the EPA regulation in 1973, and represents a significant change and increase in the cost of compliance without significant added protection to the environment. If EPA intends to add this new requirement, it must first propose it in a notice and comment rulemaking.

Recommendation: The use of 110% of the largest tank volume is the well established standard that has been used for accommodating rainfall allowances during the construction and operation of secondary containment systems. This standard has been recognized in API RP-D16, API 12R1, and EPA Region 6 Outreach Pamphlet "Information on SPCC Plans" dated July 1992 (Pages 21, 22, and 23).

Revised Guidance Language: Remove the second sentence of the third paragraph of this Chapter as follows: "Ultimately EPA determined that, for freeboard, "the proper method of secondary containment is a matter of engineering practice so [EPA does] not prescribe here any particular method" (67 FR 47101). [DELETE THE FOLLOWING STRIKEOUT TEXT] ~~However, where data are available, the facility owner/operator (and~~ [PAGE BREAK]~~ certifying PE) should consider the appropriateness of the 25-year, 24-hour storm event precipitation level as a matter of good engineering practice~~." and "EPA recognizes that a "110 percent of storage tank capacity" rule of thumb may be a potentially acceptable design criterion in many situations, and that aboveground storage tank regulations in many states require that secondary containment be sized to contain at least 110 percent of the volume of the largest tank. [DELETE THE FOLLOWING STRIKEOUT TEXT] ~~However, in some areas, 110 percent of storage tank capacity may not provide enough volume to contain precipitation from storm events. Some states require that facilities consider storm events when designing secondary containment structures, and in certain cases these requirements translate to more stringent sizing criteria than the 110 percent rule of thumb.~~ Other important factors may be considered in determining necessary secondary containment capacity. According to practices recommended by industry groups such as the American Petroleum Institute (API), these factors include:"
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Section 4.2.5 – Role of the EPA Inspector in Evaluating Sufficient Freeboard

Issue: The Role of the EPA Inspector is not consistent throughout the Guidance and in certain instances is unclear and beyond the typical scope of the EPA Inspector.

Recommendation: The role of the EPA Inspector is not accurately described. We understand that the real intent is to have the EPA Inspector ensure that the topic has been addressed, and that the plan's provisions are being implemented in the field.

Revised Guidance Language: At a minimum, the following modifications should be made to this Chapter:

To determine whether secondary containment is [ADD THE FOLLOWING UNDERLINED TEXT] addressed and implemented [DELETE THE FOLLOWING STRIKEOUT TEXT] ~~sufficient~~, the EPA inspector may:

- Verify that the ~~Plan specifies the capacity of secondary containment~~ [ADD THE FOLLOWING UNDERLINED TEXT] capacity of secondary containment

specified in the Plan is adequate for each of the containers, including an allowance for sufficient freeboard. [DELETE THE FOLLOWING STRIKEOUT TEXT] ~~along with supporting documentation, such as calculations for comparing freeboard capacity to the volume of precipitation in an expected storm event.~~

– If calculations are not included with the Plan, and the inspector suspects the secondary containment is inadequate, the inspector may request [ADD THE FOLLOWING UNDERLINED TEXT] that the owner/operator obtain, in writing from a PE, a confirmation that the secondary containment systems have been evaluated and comply with the rule [DELETE THE FOLLOWING STRIKEOUT TEXT] ~~supporting documentation from the owner/operator~~.[1]

[DELETE THE FOLLOWING STRIKEOUT TEXT]

~~– If diked area calculations appear inadequate, review local precipitation data such as data from airports or the National Weather Service,[2] as needed.~~

- ~~Review operating procedures, storage tank design, and/or system controls for preventing inadvertent overfilling of oil storage tanks that could affect the available capacity of the secondary containment structure.~~
- ~~Confirm that the secondary containment capacity can reasonably handle the contents of the largest tank on an ongoing basis (i.e., including during rain events).~~
- During the inspection, verify that the containment structures and equipment are maintained and that the SPCC Plan is properly implemented.

Section 4.2.8—"Sufficiently Impervious"

Issue: The fourth paragraph language provides detail outside the scope of this regulation and the role of the EPA Inspector. The emphasis should remain on the PE as the most qualified person to attest to the facility's containment system being constructed per §112.7(c) such that any discharge from primary containment will not escape the containment system before cleanup occurs.

Recommendation: ACC recognizes and agrees with the last sentence of the first paragraph – "Ultimately, the determination of the imperviousness should be verified by the certifying PE". This sentence should be repeated at the end of this Chapter. The emphasis noted above regarding the ultimate determination made by the PE addresses the issue.

Revised Guidance Language: Delete, in its entirety, the fourth paragraph from Chapter 4.2.8. Modify the last paragraph of this Chapter to more accurately reflect the language used in 40 CFR 112.7(c) and provide consistency with the PE support provided in the opening paragraph of this Chapter: "In summary, any of the owner/operator's determinations specifying whether secondary containment structures are capable of [ADD THE FOLLOWING UNDERLINED TEXT] preventing oil from escaping the containment system and entering navigable water before cleanup occurs [DELETE THE FOLLOWING STRIKEOUT TEXT]

~~containing oil until it is cleaned up ("sufficiently impervious")~~ should be made based on good engineering practice and may consider site-specific factors.

Section 4.2.9— Role of the EPA Inspector in Evaluating "Sufficiently Impervious"

Issue: The Role of the EPA Inspector is not consistent throughout the Guidance and in certain instances is unclear and beyond the typical scope of the EPA Inspector. The language of this Chapter differs from the other Chapters of the Guidance with respect to the discretionary judgment given to the EPA Inspector to over-ride technical decisions made by the PE. The Chapter provides very prescriptive methods for the EPA Inspector when reviewing facilities' secondary containment for their impervious nature. ACC would like to emphasize that the highly technical, multi-disciplinary skills utilized to study the soil and groundwater should be reserved for only those who have the proper technical expertise. The language, as it is currently written, appears to go far beyond what the rule requires and may be considered rulemaking. Delineation of the role of the EPA Inspector should be provided with continuous emphasis on the implementation and compliance responsibility of the owner/operator and the certification of the Plan by the PE.

Recommendation: At a minimum, re-write the language of Section 4.2.9 to better define the role EPA Inspector as compared to that of the PE's role in attesting to the facility's ability to prevent oil from reaching navigable water until cleanup occurs.

Revised Guidance Language: Utilizing language from Chapter 3.4.2 and the Introduction Chapter in Chapter 1, suggested replacement language for this Section 4.2.9 is provided as follows: "[DELETE ALL OF SECTION 4.2.9 AND REPLACE WITH THE FOLLOWING UNDERLINED TEXT] Like other technical aspects of the SPCC Plan, the determination that a facility's soil is sufficiently impervious must be made on a case-by-case basis by the PE. The plan should describe the basis for such a determination. The inspector should consider these factors when reviewing the facility to see if the situation in the field implements the plan. Although not required by the rule, the plan may include supporting documentation that was used by the PE when making this determination in developing the plan. It should be assumed that the engineer, using sound engineering judgment, is the most qualified person to make the determination of "sufficiently impervious".

By certifying an SPCC Plan, a PE attests that the Plan has been prepared in accordance with good engineering practice, that it meets the requirements of 40 CFR Part 112, and that it is adequate for the facility. EPA believes that, in general, PEs will carefully examine each facility and their attestation for sufficiently impervious, when accompanied by appropriate documentation, should be considered acceptable by EPA inspectors. If the EPA Inspector questions the PE's statement of "sufficiently impervious" he/she should fully document all observations and other pertinent information for further review by the regional staff. Follow-up action by the EPA

Inspector may include requesting additional information from the facility owner or operator. The EPA Regional Administrator retains the authority to verify the data."

Section 4.2.10— Facility Drainage (Onshore Facilities)

Issue: The wording of the first paragraph on Page 4-26 is unclear.

Recommendation: Reword the first paragraph on Page 4-26.

Revised Guidance Language: "A facility does not have to address the undiked area requirements of §112.8(b)(3) and (4) or §112.12(b)(3) and (4) [ADD THE FOLLOWING UNDERLINED TEXT] (which typically addresses passive containment measures) if active containment measures (as described on Page 4-17) are utilized as secondary containment [DELETE THE FOLLOWING STRIKEOUT TEXT] ~~facility does not use drainage systems to meet one of the secondary containment requirements in the SPCC rule~~]."

Section 4.2.11— Role of the EPA Inspector in Evaluating Onshore Facility Drainage

Issue: It is the PE's responsibility, not that of the EPA inspector, to determine if the drainage for a facility is adequate. It is the role of the EPA Inspector to ensure that the PE's determination is documented in the Plan and meets the requirements of the Rule.

Recommendation: Modify the second sentence of this paragraph.

Revised Guidance Language: "The inspector should also examine the facility to determine whether the drainage procedures are implemented as described in the SPCC Plan [DELETE THE FOLLOWING STRIKEOUT TEXT] ~~and whether they are appropriate for the facility.~~"

Section 4.4 - Selected Issues Related to Secondary Containment and Impracticability Determinations

We believe EPA should acknowledge that the calculation of probable discharge amounts may not be practical at large facilities due to the number and complexity of the piping, and that more general assumptions may be appropriate. We would add that the PE should determine when more general assumptions are appropriate, and not EPA. The language of the guidance should reflect EPA's understanding that these calculations are a good engineering practice, but are not always practical.

At the end of paragraph two on page 4-30 of the Guidance, [DELETE THE FOLLOWING STRIKE OUT TEXT] ~~A contingency plan or FRP is required when a~~

~~determination of impracticability is made pursuant to §112.7(d).~~ The rule itself states the requirement more clearly than the guidance.

[DELETE THE FOLLOWING STRIKE OUT TEXT] ~~ASPHALT PAVED AREA~~ from figures 4-8 and 4-9 because they infer that the entire surface of the facility must be paved.

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Section 5: Oil/Water Separators

ACC supports a number of provisions outlined in this section. Section 5.2 provides clarity as to when the wastewater treatment exemption applies with particular regard to oil/water separators. The discussion of section 5.4 clarifies the conditions where oil/water separators can be used to meet secondary containments requirements of the rule. We also support clarification that oil/water separators can potentially be used to serve as environmentally equivalent substitutes for ponds, lagoons, or catchment basins in facility drainage systems, and that redundant secondary containment around oil water separators used for secondary containment (i.e., tertiary containment) is not required.

We find these provisions helpful and appropriate in implementing the 2002 amendments to the SPCC regulation.

ACC has identified several areas in this section of the Guidance that we believe should be amended and/or clarified as follows:

Section 5.6.1 Documentation by Owner/Operator

Issue: EPA has stated that one of the objectives to the 2002 SPCC Rule was to decrease the regulatory burden on facility owners and operators subject to the rule, while preserving environmental protection. The discussions contained within this section concerning documentation by the owner/operator tend to require more detailed documentation than is required by the rule which is unlawful and adds more regulatory burden upon the owner/operator. Oil/water separators used exclusively for wastewater treatment are exempt from all SPCC requirements, and no documentation is required for this equipment in the SPCC Plan.

Recommendation: Reference to oil separators that do not serve as a compliance function within SPCC should be eliminated. All the bullet items of this section giving examples of elements to include in discussion of oil separators should be eliminated.

Revised Guidance Language: We recommend that Section 5.6 be revised as follows:
Oil/water separators used exclusively for wastewater treatment are exempt from all SPCC requirements, and no documentation is required for this equipment in the SPCC Plan.
For oil/water separators used to meet SPCC secondary containment requirements, the SPCC Plan should discuss the separator design capacity, configuration, [ADD THE FOLLOWING UNDERLINED TEXT] and overall operation to ensure that it functions in a manner that is consistent with its intended use. [DELETE THE FOLLOWING STRIKEOUT TEXT] ~~maintenance, operation, and other elements of the drainage systems that ensure proper functioning and containment of the oil as required by §112.7(a)(3)(iii). Examples of elements that this discussion should include are:~~

~~The presence and configuration of valves to prevent the accidental release of oil;~~
~~Routine visual inspection of the oil/water separator, its contents, and discharges of effluent;~~
~~Preventive maintenance of facility equipment affecting discharge, including the removal of settled pollutants and collected oil;~~
~~A drainage area that flows to the oil/water separator and corresponding anticipated flow rate of the drainage system to the separator;~~
~~Appropriate capacity of the oil/water separator for oil and for wastewater;~~
~~Provisions for adequate separate storage capacity (based on the containment sizing required by the rule) to contain oil recovered in the oil/water separator; and~~
~~Documentation associated with the maintenance and inspection of oil/water separators.~~

A separate bulk storage container used to store oil following separation in any oil/water separator (i.e., wastewater treatment, secondary containment, or oil production) is subject to all applicable requirements of 40 CFR part 112, including §§112.8(c) or 112.9(c), as appropriate.
For oil/water separators used in oil production, the oil/water separators are considered bulk storage containers to be included in the SPCC Plan. The location of these containers must be indicated on the facility diagram and discussed in the general requirements in accordance with §112.7(a)(3). For more information on facility diagrams, refer to Chapter 6 of this document. The facility owner/operator may determine that the sized secondary containment required for these oil/water separators is impracticable, pursuant to §112.7(d). If impracticability is determined for sized secondary containment, the SPCC Plan must clearly explain why secondary containment is not practicable and provide an oil spill contingency plan following the provisions of 40 CFR part 109. In addition, such facilities must conduct integrity and leak testing of bulk containers and associated valves and piping, and provide a written commitment of manpower, equipment, and materials to respond to oil discharges (§112.7(d)). For more information on impracticability, refer to Chapter 4 of this document.

Section 5.6.2 Role of the EPA Inspector

Issue: This section suggests that the EPA inspector review and evaluate this additional documentation to determine if the PE certifying the SPCC Plan appropriately evaluated the use and operations of oil/water separators at the facility using good engineering practices.

Recommendation: It is understood that the PE certifying the facility's SPCC Plan must be aware of the designated use, operation, and capacities of oil/water separators in order to categorize them as exempted or covered by the SPCC Rule, and to determine if they are adequately designed and operated for their intended uses. However, the amount of detail that this section of the Guidance implies should be

contained in the SPCC Plan is excessive and provides no additional environmental protection.

Revised Guidance Language: We recommend that Section 5.6.2 be revised as follows:

As with other aspects of the SPCC Plan, the certifying PE will review the use of and applicable requirements for oil/water separators at a facility and ensure that they are consistent with good engineering practice.
The EPA inspector will [ADD THE FOLLOWING UNDERLINED TEXT] review the plan and the use of the oil/water separator to ensure that the proper considerations are addressed for either categorizing the separator as a waste water treatment unit or for the purpose of providing secondary containment. If the Plan is certified by a PE and the distinction of the use of the separator is consistent with the requirements of the rule, it will most likely be considered acceptable by the Regional Administrator.
[DELETE THE FOLLOWING STRIKEOUT TEXT] ~~verify that any oil/water separators at a facility that are not addressed in the SPCC Plan are in fact used exclusively for wastewater treatment and not to meet any requirement of part 112. This review considers the intended and actual use of the separator. The EPA inspector should consider the intended use of the separator at the facility (e.g., wastewater treatment, secondary containment, oil production, recovery, or recycling), any flow diagrams illustrating the use of the separator, and the design specifications of the unit in evaluating the proper application of the wastewater exemption. The EPA inspector may also consider the flow-through capacity of the separator, the emulsion of oil present within the separator, and the design specifications of the unit in evaluating the use of the oil/water separator.~~
~~For oil/water separators used to meet SPCC secondary containment requirements, the EPA inspector will verify that the Plan includes, for each oil/water separator used as secondary containment, a discussion of the separator design capacity, configuration, maintenance, and operation, as well as other elements of the drainage systems that ensure proper functioning and containment of the oil in accordance with §112.7(a)(3)(iii). Inspectors should note the risk associated with this form of containment and should evaluate the design, maintenance, operation, and efficacy of oil/water separator systems used for containment very carefully. Generally, these separators should be monitored on a routine schedule, and collected oil should be removed as appropriate and in accordance with the drainage procedures in the Plan. Oil/water separators used in the production of oil (e.g., heater-treaters and gun barrels) and other separation and treatment facility installations, are subject to the specific secondary containment requirements for oil production facility bulk storage containers in §112.9(c)(2). The SPCC Plan must address this equipment and include the storage capacity of the equipment in the storage capacity calculations (§112.1(b) and (d)(2) and the definition of storage capacity in §112.2.) If sized secondary containment is determined to be impracticable for the equipment, the SPCC Plan must document the reason for impracticability and comply with the additional regulatory requirements in §112.7(d).~~

By certifying the SPCC Plan, a PE attests that the Plan has been prepared in accordance with good engineering practice and with the requirements of 40 CFR part 112, and that the Plan is adequate for the facility. Thus, if the wastewater treatment exemption is certified by the PE or if other oil/water separator uses are properly documented, they most likely will be considered acceptable by EPA inspectors. However, if the documented uses of the oil/water separators [DELETE THE FOLLOWING STRIKEOUT TEXT] ~~do not meet the standards of common sense,~~ [ADD THE FOLLOWING UNDERLINED TEXT] would not prevent spills from reaching navigable waters, appear to be incorrect, deviate from the use described in the Plan, are not maintained or operated in accordance with the Plan, ~~or simply do not operate correctly,~~ [ADD THE FOLLOWING UNDERLINED TEXT] or the separator appears to be malfunctioning or out of service, further follow-up action may be warranted. This may include a request for more information or a Plan amendment in accordance with §112.4(d).

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Section 6—Facility Diagrams

ACC supports a number of provisions outlined in this section. ACC appreciates EPA's recognition that facilities can be complex, and that a high level of flexibility is needed to construct a meaningful facility diagram. Allowing the plan to reference other diagrams and other facility-specific information is a good practice. ACC also appreciates that the guidance is clear that the inspector should defer to the PEs best professional judgment regarding the adequacy of the facility diagram. We find these provisions helpful and appropriate in implementing the 2002 amendments to the SPCC regulation.

ACC has identified several areas in this section of the Guidance that we believe should be amended and/or clarified as follows:

Section 6.1 – Introduction

Issue: There is no distinction made between fixed and mobile containers with respect to the applicability of 40 CRF 112 (7)(a)(3).

Recommendation: The introduction and purpose (Section 6.1.1) should make clear that the intent of the facility diagram as discussed in the rule preamble (*67 FR 47097*) is to include only fixed containers. The language throughout this entire section is inconsistent with the preamble language with respect to how fixed and portable containers are to be represented on the facility diagram.

Section 6.1.1 – Purpose

Issue: The generation of a facility diagram to meet the stated purposes in this subsection may not be possible with just one diagram. This is particularly true for large petrochemical complexes.

Recommendation: Add a brief discussion that a diagrams that a facility generates as part of their operations (i.e., diagrams of storage tank locations, underground piping, stormwater draining areas, and outfall locations) can all be used collectively to meet the requirements of a 112 (7)(a)(3). These diagrams can either reside within the plan, or be referenced by it.

Section 6.2.1—Level of Detail

See 6.1.1 above.

Section 6.2.2 (Facility Description) and 6.2.3 (Oil Containers)

Issue: There is no distinction made between fixed and mobile containers with respect to the applicability of 40 CRF 112 (7)(a)(3).

Recommendation: We request that the text should be modified to address only fixed oil storage containers**.**

Section 6.2.4 ---Mobile and Portable Containers

Issue: This subsection is clearly inconsistent with the 2002 preamble language (67 FR 40497) which states that… "The facility diagram must include all fixed (i.e., not mobile or portable) containers which store 55 gallons or more of oil and must include information marking the contents of those containers. If you store mobile containers in a certain area, you must mark that area on the diagram."

Recommendation: Language should be changed to emphasize the need to mark on the facility diagram areas where mobile containers are stored, the volume of the largest container, and the aggregate volume of oil that can be stored in the area. This should be adequate information in order to develop spill prevention and countermeasure plans for mobile containers. In addition, keeping a log of all mobile container contents is highly impractical for most large facilities, and text stating this should be removed from the guidance.

Section 6.2.6 -- Piping and Manufacturing Equipment

Issue: Acknowledging that facilities can be complex, and that a high level of flexibility may be needed especially when trying to display piping and other facility systems is good guidance to inspectors. Also, allowing the plan to reference other diagrams and facility-specific information is also a good practice. One advantage to this approach is that as diagrams are updated for other purposes, the SPCC plan may not necessarily need to be concurrently updated-unless the references substantially change. One issue that may affect smaller facilities is that much of the engineering information, i.e. blueprints, process flow diagrams, may not be routinely kept at the facility.

Recommendation: Text that states these reference materials be kept at the facility should be removed from the guidance. As an emergency response tool, it is unlikely that these reference diagrams would be utilized. They serve more to support the development of prevention and the countermeasure portions of the plan.

Section 6.3 —Facility Diagram Examples

Issue: Examples indicate the need to keep a log of all mobile container and their contents. This is not practicable give the frequency at which the exact number and types of mobile containers can change at a large facility.

Recommendation: Remove text that refers to mobile container log sheets, and remove any examples given.

Section 6.4.1 — Review of a Facility Diagram-Documentation by Owner/Operator

Issue: The guidance is clear that if the PE accepts the facility diagram, then the inspector should defer to the PE's best professional judgment. However, text refers to documents and diagrams that must be available for review at the facility.

Recommendation: As stated in recommendation for Section 6.2.6, these reference diagrams should not be required to be maintained at the facility. However, if referenced in the plan, they should be made available to the inspector with in a reasonable period of time (possibly within 10 business days of the date of the site inspection). If this reference material is confidential business information, it must be handled in accordance with procedures specified in 40 CFR Part 2 Public Information, Subpart B, and Confidential Business Information.

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Section 7—Inspection, Evaluation, and Testing

ACC supports a number of provisions outlined in this section, particularly the Agency's specific reference to the environmental equivalence of visual inspection to other forms of integrity evaluation for certain storage containers. We find this provision and others helpful and appropriate in implementing the 2002 amendments to the SPCC regulation.

ACC has identified several areas in this section of the Guidance that we believe should be amended and/or clarified as follows:

Section 7.2.1 Summary of Inspection and Integrity Testing Requirements

Issue: Table 7-1 is very useful in summarizing the regulations. It would also be useful if this table would reference where environmentally equivalent actions are acceptable in lieu of the required actions.

Recommendation: It is suggested that additional language be added to the table to let the inspector know when an alternative action is environmentally acceptable.

Example Revised Guidance Language:

Aboveground **bulk storage** container	112.8(c)(6) or 112.12(c)(6)	Test	***Test container integrity or in the case of drums explain why integrity testing is not necessary. Follow a regular testing schedule and whenever appropriate after repairs***

Section 7.2.2 Regularly Scheduled Integrity Testing and Frequent Visual Inspection of Aboveground Bulk Storage Containers

Subsection—Regularly scheduled integrity testing

Issue: This subsection states that this requirement applies to all types of containers storing any type of oil. The document is not clear that there are acceptable deviations to this requirement as detailed in Section 7.3.3.

Recommendation: The text should refer the reader to Section 7.3.3 for examples when deviations from the integrity testing requirement are appropriate; such as for IBC's and drums where integrity testing would not be appropriate.

Revised Guidance Language: The integrity testing requirement applies to large (field constructed or field-erected) and small (shop-built) aboveground containers; aboveground containers on, partially in (partially buried, bunkered, or vaulted tanks), and off the ground wherever located; and to aboveground containers storing any type of oil. ***However, there are specific circumstances where owners and operators may deviate from the integrity testing requirements. Section 7.3.3 provides examples of some of these circumstances.***

Section 7.2.2 Regularly Scheduled Integrity Testing and Frequent Visual Inspection of Aboveground Bulk Storage Containers

Subsection— Frequent visual inspection

Issue: In this subsection**,** EPA states

"… EPA recommends that even where not specifically required by the rule, it is good engineering practice to frequently inspect the outside of oil-filled operational, electrical, and manufacturing equipment to determine whether it could cause a discharge."

We believe that good engineering practice is best determined by the PE. If EPA states that frequently inspecting oil filled equipment is good engineering practice and the PE needs to certify that the SPCC plan was developed in accordance with good engineering practice, then the facility essentially will be required to inspect "frequently" even though such frequency has not been either defined or required by rulemaking - and even if the PE does not consider this appropriate for the facility.

Recommendation: We recommend that this language be deleted from the document.

Section 7.3.4 Environmental Equivalence Scenarios for Shop Built Containers

Issue: As with the above comment EPA states in the quote below what is considered good engineering practice which may or may not be the case for all facilities.

"Typically, good engineering practice recommends that these containers be elevated (usually on pallets or other support structures) to minimize bottom corrosion and to facilitate a visual inspection of all sides of the container to detect any leaks during the regular owner/operator inspections outlined in the Plan."

Recommendation: We recommend that EPA remove this language.